

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JAMES GINZKEY, RICHARD  
FITZGERALD, CHARLES CERF, BARRY  
DONNER, and on behalf of the class members  
described below,

Plaintiffs,

v.

NATIONAL SECURITIES CORPORATION,  
a Washington Corporation,

Defendant.

Case No. C18-1773RSM

ORDER GRANTING MOTION FOR  
LEAVE TO FILE *DAUBERT* MOTION

This matter comes before the Court on Defendant NSC's Motion for Leave to File Motion to Exclude. Dkt. #99. NSC seeks to file a motion to exclude Plaintiff's expert witness's opinions after the deadline set in Local Rule 16(b)(4): "[u]nless otherwise ordered by the court, parties shall file any motion to exclude expert testimony for failure to satisfy *Daubert v. Merrell Dow Pharmaceuticals, Inc.* and its progeny not later than the deadline to file dispositive motions." NSC filed this seven days after the deadline to file dispositive motions. NSC states that its attorneys simply "overlooked LCR 16(b)(4)" due in part to the flurry of

1 recent activity in this case and illness from COVID-19. *See* Dkt. #99 at 2–3. NSC attaches its  
2 proposed motion. Trial is set to begin on May 9, 2022.

3 A scheduling order “may be modified only for good cause and with the judge’s  
4 consent.” Fed. R. Civ. P. 16(b)(4). The decision to modify a scheduling order is within the  
5 broad discretion of the district court. *Johnson*, 975 F.2d at 607. “Rule 16(b)’s ‘good cause’  
6 standard primarily considers the diligence of the party seeking amendment.” *Id.* at 609. If a  
7 party has acted diligently yet still cannot reasonably meet the scheduling deadlines, the court  
8 may allow modification of the schedule. *Id.* However, “if that party was not diligent, the  
9 inquiry should end” and the motion to modify should not be granted. *Id.* Local Civil Rule  
10 16(m) states that “this rule will be strictly enforced” in order to “accomplish effective pretrial  
11 procedures and avoid wasting the time of the parties, counsel, and the court.” While prejudice  
12 to the party opposing the modification may provide additional reasons for denying the motion,  
13 it is not required to deny a motion to amend under Rule 16(b). *Coleman v. Quaker Oats Co.*,  
14 232 F.3d 1271, 1295 (9th Cir. 2000).  
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18 Although the Court’s Scheduling Order is silent on the *Daubert* motion deadline, the  
19 Court finds that NSC must still establish good cause to modify this deadline set by local rule.  
20 The Court has reviewed the declarations of counsel and finds that NSC has been diligent in  
21 preparing for this case and that the extenuating circumstances of COVID-19 infections have  
22 established good cause for modifying the scheduling order as requested. The prejudice to  
23 Plaintiffs is minimal given the amount of time before trial.  
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25 Having considered the briefing from the parties and the remainder of the record, the  
26 Court hereby finds and ORDERS that Defendant NSC’s Motion for Leave to File Motion to  
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1 Exclude, Dkt. #99, is GRANTED. NSC shall immediately file its proposed Motion on the  
2 docket and note it for consideration on March 25, 2022.

3 DATED this 10<sup>th</sup> day of March, 2022.

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7 RICARDO S. MARTINEZ  
8 CHIEF UNITED STATES DISTRICT JUDGE  
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